IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3416 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KHURSHIDBHAI HAMIDBHAI ANSARI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3416 of 2002

MS BANNA DUTTA FOR MR AR SHAIKH for Petitioner No. 1

MRS HB PUNANI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/04/2002

ORAL JUDGEMENT

1-1-2002 P.C., Ahmedabad City

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 1-1-2002 passed by the

Police Commissioner, Ahmedabad City, and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, a solitary offence under the Prohibition Act has been registered against the detenu at Prohibition Police Station, South Zone being Prohi.No.2796 of 2001 on 30-12-2001 and he was detained on the same day. According to her, detenu was released on bail on 31-12-2001. She has submitted that two statements of independent witnesses were recorded on 30th and 31st of December, 2001. She has further submitted that the detenu has sent a representation to the detaining authority on 10-3-2002 through advocate, however, same was rejected on 12-3-2002 which as communicated on 14-3-2002 to the detenu through jail authority. She has also submitted that no affidavit has been filed either by the State or by the detaining authority justifying the grounds mentioned by the detaining authority in the order of detention. In this connection, she has relied upon a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detentiion is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

4. Since no affidavit has been filed either by the detaining authority or by the State explaining satisfactorily or justifying the action taken by them, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not

press any other points.

5. The petition is allowed. The impugned order of detention dated 1-1-2002 passed against the detenu is hereby quashed and set aside. The detenu Khurshidbhai Hamidbhai Ansari is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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